IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 800 OF 2004
IN
Summary SUIT NO. 383 OF 2004

Rajan Agarwal . .... Plaintiff
vs.
Chetan R. Dhruv ... Defendant

G. A. Udaipuria a/w. Mrs. A. Kanakia for Plaintiff
H. Toor a/w. A.A. Lokhandwala i/b. Lokhandwala & Co., for defendant

CORAM: S. U. KAMDAR J.

Date: 28/9/2005

P.C.

The present suit is filed for the recovery of a sum of Rs. 2,00,000/- on dishonoured cheques. The said cheques have been forwarded by the defendant to the Plaintiff under covering letter dated 20th August 1999. The letter indicates that the said cheques were given for consideration for purchase of certain shares.

2. Learned advocate for the defendant has raised three defences. Firstly it is contended that the suit filed is not on a written contract. He has drawn my attention to para 11 on page 9 as well as on page 2, immediately below the cause title wherein it is mentioned that the suit is for recovery of money for shares sold under section 55 of the Sale of Goods Act, 1930. According to him thus the present suit is

not maintainable under Order XXXVII Rule (2) CPC. However, a perusal of the particulars of claim as well as pages 4, 9 and 10 of the plaint it can been seen that the suit is also filed on a dishonoured cheque, apart from any written contract. Thus in my view even if there is no written contract the suit is maintainable on negotiable instrument being dishonoured cheques.

3. The next contention is that the suit is time barred. It has been contended that the suit is on a dishonoured cheque and thus the same has to be filed within a period of 3 years from the date of the cheque. In my opinion cause of action to sue on dishonoured cheque arises only from the date of dishnour of the cheque and not from the date of a cheque. The date of dishonour memos are 25th February 2000 and 25th March 2000. From the proceedings I find that the suit is lodged on 25th October 2002 and in that view of the matter the suit is within time. However, the learned advocate for the defendant contends that the suit which was filed on 25.10.02 was dismissed by the Prothonotary and Senior Master, High Court , Bombay, in exercise of power under Rule 986 of High Court (O. S.) Rules and had rejected the plaint and thus the date of lodging should be ignored and only the date on which the suit is restored can be treated. Once the suit is lodged the running of a limitation period stops. Even if the suit is thereafter dismissed under Rule 986, the

date of the lodging of the suit does not shift to the date of the admission of the suit as contended by the learned counsel . In my opinion on restoration of the suit which is rejected under Rule 986 the date of lodging for the purpose of limitation period would be the same. Thus there is no merit in this defence.

4. The third contention raised by the learned advocate for the defendant is that the cheques were issued in respect of certain transactions and the shares are not transferred in favour of the defendant herein and therefore the payment is not made by the defendant to the Plaintiff and no amount is now due and payable under the aforesaid four cheques. Under the Negotiable Instruments Act there is a presumption of consideration having been passed once the cheques are issued. Thus there is no merit in this contention.

5. The principal amount claimed is Rs.2 lakhs. However, with a view to give an opportunity to the defendant to defend the suit, I direct the defendant to deposit a sum of Rs.2 lakhs in this court within a period of 4 weeks, failing which the Petitioner will be entitled to a decree. The amount so invested will be invested by the Prothonotary and Senior Master in fixed deposit in any nationalised bank, initially for a period of three years and renew the same from time to time till further orders.

If the amount is paid as aforesaid, then suit is transferred to the list of Commercial causes. Written statement or points of defence to be filed four weeks from the date of deposit. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.

(S. U. KAMDAR J.)